

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BAKER TILLY CAPITAL, LLC,)	
)	
Petitioner,)	Judge Sharon Johnson Coleman
v.)	
)	Magistrate Judge Morton Denlow
HIGHER PERPETUAL ENERGY, LLC,)	
)	Case No. 12-CV-3628
Respondent.)	

AMENDED MOTION TO CONFIRM ARBITRATION AWARD

Petitioner BAKER TILLY CAPITAL, LLC (“BT CAPITAL”), by its undersigned attorney, respectfully moves this Court to confirm the April 20, 2012 arbitration award of William E. Deitrick (“the Award”) and enter judgment on behalf of BT CAPITAL pursuant to Sections 9 and 13 of the Federal Arbitration Act (“the FAA”). This is an amended motion that supersedes BT CAPITAL’S motion to confirm, previously filed on August 14, 2012. In support of its motion, BT CAPITAL relies on all matters of record and further states as follows:

1. Following an arbitration hearing in Chicago, Illinois, an arbitration award was issued on April 20, 2012 in favor of BT CAPITAL and against the Respondent, HIGHER PERPETUAL ENERGY, LLC (“HPE”), by Arbitrator William E. Dietrick in American Arbitration Association Case No. 51-148-00733-11. BT CAPITAL filed a Petition to Confirm Arbitration Award on May 11, 2012 (Doc. 1).

2. HPE is not a resident of Illinois. Accordingly, on May 14, 2012, BT CAPITAL filed a motion, pursuant to Section 9 of the FAA, to direct the U.S. Marshal to serve Respondent with the Petition to Confirm Arbitration Award and Summons (Doc. 4), and the Court granted the motion (Doc. 7). The U.S. Marshal personally served HPE on June 13, 2012, by delivering

the Summons and Petition to HPE's Registered Agent, Lee Wilkins, at 1999 Bryan Street, Suite 3300, Dallas, Texas 75201-6822. (Doc. 8.)

3. Section 12 of the Federal Arbitration Act requires a party seeking to vacate, modify, or correct an award to provide notice of such a motion "within three months after the award is filed or delivered." 9 U.S.C. § 12. HPE has not served a motion to vacate, modify, or correct the Award against HPE. The time to provide notice of a motion to vacate, modify, or correct an award has elapsed because the award was filed and delivered on April 20, 2012, more than three months ago.

4. All of the papers, required to be filed under Section 13 of the FAA,¹ have been filed as follows:

- A copy of the agreements to arbitrate (Petition Exs. 1 and 2, Doc 1-2, 1-3);
- A copy of the April 20, 2012 Award of William E. Deitrick (Petition Ex. 4, Doc 1-5);
- Notice regarding time of the making of the Award (Petition Ex. 3, Doc. 1-4) and Transmitting the Award (Petition Ex. 5, Doc. 1-6);
- Rules regarding the time to make the award (Petition Ex. 6, Doc. 1-7);
- Notice of the petition and summons to respondents by proof of service by the United States Marshall in accordance with 9 U.S.C. § 9 (Doc. 8).

5. The Petition, exhibits thereto and proof of service, establish that all the prerequisites for an order to confirm the Award against HPE. The award provides for payment in amount of \$354,237.47, plus post-Award Interest at 5% per year from April 20, 2012 through April 28, 2012, for a total amount due as follows:

¹ Section 13 of the FAA provides for the filing of the following papers: a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award. (b) The award. (c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

Description	Date	Duration (days)	Amount
Initial Arbitration Award against HPE	April 20, 2012		\$354,237.47
Post-Award - Prejudgment Interest (5% per annum)	August 28, 2012	129	\$ 6,259.81
Total Judgment Amount Due			\$360,497.28

6. A copy of the proposed order is attached hereto and will be submitted electronically using the Court's e-mail address for proposed orders.

WHEREFORE, Petitioner BAKER TILLY CAPITAL respectfully requests that this Court enter an order confirming the April 20, 2012, Arbitration Award of William E. Deitrick and direct the clerk to enter judgment in favor of BAKER TILLY CAPITAL and against HIGHER PERPETUAL ENERGY, LLC in the amount of **\$360,497.28** which includes prejudgment interest.

August 20, 2012

Respectfully submitted,

By: /s/ Paul J. Ripp
Attorney for Petitioner

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CERTIFICATE OF FILING

I hereby certify that on August 20, 2012, I electronically filed the foregoing **Amended Motion to Confirm Arbitration Award**, using the Court's CM/ECF electronic filing system from the offices of Williams Montgomery & John, Ltd., 233 South Wacker Drive, Suite 6100, Chicago, Illinois 60606.

/s/ *Paul J. Ripp*

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